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THE COLLECTION AND DISSEMINATION OF INFORMATION ON MEASURES, INCLUDING LAWS AND REGULATIONS, AFFECTING THE ACCESS OF SERVICES AND SERVICE SUPPLIERS TO WORLD MARKETS, INCLUDING CONSIDERATION OF THE POSSIBILITY OF SETTING UP A COMPUTERIZED DATABASE

(Item 2 (b) of the Work programme)

Database on measures affecting service trade

Note by the UNCTAD secretariat

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Introduction

A. Mandate

1. Item 2 (b) of its Work Programme requests the Standing Committee on Developing Service Sectors to *"collect and disseminate information on measures, including laws and regulations, affecting the access of services and service suppliers to world markets, including a study of the possibility of setting up a computerized database in this regard, with a view to enhancing the service exports of developing countries."*

2. The UNCTAD secretariat has examined the feasibility of setting up a computerized database on measures affecting service trade. A pilot version of the database is being prepared for demonstration to delegations during the second session of the Standing Committee. This report outlines the approach taken to the database and summarizes the preliminary findings of the feasibility study.

B. Background

3. The Seventh United Nations Conference on Trade and Development called for intensified work on services, especially in relation to trade and technology issues. It also requested the Secretary-General of UNCTAD to provide technical assistance to developing countries in order to enable them to participate more effectively in the Uruguay Round of multilateral trade negotiations, and to support the negotiating process as a whole. As part of technical assistance projects to support the participation of developing countries in the services negotiations, UNCTAD conducted a number of studies, focusing on specific sectors and countries, with a view to identifying policy issues and the interests of developing-country service producers with a view to enhancing their participation in international trade. These studies, of necessity, went into considerable detail on measures that have an impact on service trade. No systematic study of the regulatory environment in the service sector has been directly undertaken by UNCTAD so far, however.

4. In the context of the technical assistance activities undertaken by UNCTAD with respect to the participation of developing countries in the Uruguay Round, delegations have raised the problem of formulating requests for negotiations on specific sectoral and subsectoral commitments to be included in the schedules annexed to the draft General Agreement on Trade in Services (GATS). These difficulties stem primarily from a lack of adequate information regarding the regulatory structure of other countries and problems in assessing the impact of such measures on actual or potential exports of services. Unlike many developed countries, developing countries seldom had access to detailed information from transnational corporations (TNCs) identifying measures affecting their ability to do business in foreign markets. They have thus approached UNCTAD for assistance in this respect. Although laws and regulations are published, a lack of sectoral specificity complicates the identification task. In many cases, measures dealing with such broad areas as immigration, for example, may affect trade in specific service sectors. The problem of compiling information and devising appropriate mechanisms to facilitate its dissemination is evident. Private-sector entities in developing countries often lack information regarding opportunities to export their services, and may be unable to take full advantage of them because of lack of availability of information on standards and other requirements in target markets. Lack of access to information hampers identifying niches in specific markets and developing capacities with greater focus.

5. Furthermore, although regulatory information is more readily available for some sectors than others, no comprehensive database is available for use by developing countries seeking comparable data with respect to a large number of sectors and countries. In order to facilitate cross-sectoral and cross-country comparisons on the various regulatory measures employed in services, such a database would be helpful. The information required by developing countries would also need to respond to a number of parameters with specific relevance to trade negotiations. For example, the question of the mode of delivery of a service affected by a particular measure is a crucial parameter in such a context. Available regulatory information seldom indicates the mode of delivery. Even when it does, the understanding of the issue may not coincide with the definitions established in the context of negotiating a General Agreement on Trade in Services.[1]

C. Major users and uses of the database

6. The considerations outlined above point to the need for a database offering information on measures affecting trade in services. Such a database would promote transparency in the services sector and be of considerable use to at least four specific constituencies: namely negotiators, private-sector service providers, policy-makers and academic researchers.

7. For trade negotiators, particularly those from developing countries, having regulatory information available at a national or a sectoral level would facilitate the formulation of requests and the assessment of offers made by countries in the negotiating process. Not only would the database do this but it could also provide negotiators with information regarding the conformity of certain measures to multilateral trade principles, such as market access, national treatment, and most-favoured-nation (MFN) treatment.

8. For service providers in the private sector, the database would provide information support for studying potential markets for exports, barriers to entry, establishment, and operation. The information included in the database on investment, licensing authorities and procedures, fiscal measures, recognition of professional qualifications, and restrictions related to the movement of persons would be valuable not only in identifying export opportunities but also in guiding service providers in the procedures involved in the export of services.

9. For policy-makers, the database would function as a reference tool containing examples of regulatory frameworks in the service sector applied by other countries, thus aiding in the formulation and comparison of various options for regulating a specific service activity. This would have particular relevance in the context of changes in regulatory regimes necessitated by the impending liberalization of international services trade as well as by transformations in technology and evolving national economic policies. Furthermore, regulatory information on other countries could facilitate the identification of export opportunities for domestic service providers and the formulation of appropriate export promotion policies.

10. The database also has applications for analytical and research purposes. With its facilities for ranking and extracting data according to selected parameters, the database would aid in the examination of regulatory situations in specific countries and sectors, as well as in making inferences about regulatory patterns and their relation to the stage of development of countries, regional integration arrangements and their effect on service transactions.

11. In sum, the proposed database could aid considerably in enhancing the capacity of user countries to negotiate terms of trade and to pursue service exports to world markets, as well as policy-making at the national level. Thereby a deeper analytical understanding could be gained of the services sector and the role of regulation therein. It would also contribute substantially to the furthering of transparency in services trade at the international level.

D. UNCTAD's experience with databases

12. UNCTAD has accumulated considerable expertise in the compilation and dissemination of information through various systems. The Economic Time-Series databank (ETS), set up in 1977, has made available information at a national level from various international organizations (e.g. UNCTAD, IMF, World Bank, OECD, UNSTAT, UNESCO and FAO) concerning several time series of economic variables, including those on the balance-of-payments, debt, official financial flows, national accounts statistics, labour statistics, prices, exchange rates and external trade from as early as 1950. The ETS has also provided access to data on specific exports, imports, and re-exports from one country to partner countries on a specific commodity. In trade in commodities, UNCTAD has built up a number of databases specializing in various kinds of information. UNCTAD initiated the development of the Automated System for Customs Data (ASYCUDA) in 1984, which has enabled the computerization of customs declarations, accounting procedures, import and export licensing, and trade statistics in several developing countries. The Debt Management and Financial Analysis System (DMFAS), developed in UNCTAD beginning in 1978, contains legal and administrative advice, book-keeping suggestions, a debt-monitoring system, and a debt projection and balance-of-payments linkage system. UNCTAD's Trade Analysis and Information System (TRAINS) provides policy-makers and economic operators engaged in exporting with information on trade control measures, trade flows and potential importers, along with other trade data for selected products and markets. The Software for Market and Restrictions on Trade (SMART) information system provides market-specific information on restrictions on trade in goods. It also allows simulations to be carried out of the effects of liberalization of tariffs and non-tariff barriers. The GREENTRADE information system, currently under development, will list environmental measures which have an impact on trade. UNCTAD has so far not been involved in developing specific databases on trade in services. However, it does provide logistic support to shipping operations through such systems as the Advanced Cargo Information System (ACIS). UNCTAD's expertise in data management in these related fields should be of great value in setting up the proposed database.

E. Issues specific to services

13. The nature and scope of regulations which affect service trade are rather different from those affecting trade in goods. Thus building a database on measures specific to trade in services raises issues that are distinct to this sector. First, whether they take the form of a tariff or of a non-tariff barrier, barriers to goods are seen as exceptions to the hypothetical general rule of the free flow of goods. In contrast, in the service sector, regulation is the rule rather than the exception. Regulations can have a variety of objectives and effects. Some, such as those covering accreditation procedures and recognition of qualifications, often have as their explicit intent the safeguarding of standards with respect to the quality of the professional service rendered. Others, such as the economic-needs test, usually has as an objective the protection of the domestic labour market. There are regulations motivated by national security, cultural, prudential, and other considerations. For all measures affecting trade in services, the specific extent and nature of their

impact may vary according to the service sector involved and the mode of delivery of the service in question.

14. There are instances where regulations pertaining to one sector may have a substantial impact on trade in another sector. For example, regulations on national health insurance coverage may have a strong impact on trade in medical services. Immigration laws which regulate the entry of persons into a country obviously affect the temporary movement of service providers, but may have greater or lesser impact on trade in certain sectors. Concerning the mobility of persons, restriction is usually the rule and the permission to enter is often granted under specified conditions as an exemption from the general application of the regulation. In other words, in many cases the database cannot identify barriers *per se* but rather may serve to identify specific liberalization measures. The scope of a database on measures affecting services trade could be much larger and far more heterogeneous than in the case of goods trade. Moreover, in designing the database, adequate cognizance should be taken of considerations specific to regulation in the services sector. Therefore, although considerable guidance could be gained from the databases developed by UNCTAD on goods trade, the database on services cannot be modelled too closely on them. Among the information systems in UNCTAD, GREENTRADE comes closest to the considerations relevant for a services database. Some of the ways of organizing information in that system could be applied to the design of the proposed database on measures affecting trade in services.

I. INPUTS AND MAIN FEATURES

A. Inputs

15. The essential inputs into the database would include the following:[2]

- The country which imposes the measure;
- The service sector affected by the measure;
- The kind of measure imposed;
- A detailed description of the measure;
- The regulatory instrument which contains the measure;
- The source of information on the measure;
- The mode of delivery affected by the measure; and
- The conformity of the measure to multilateral trade principles such as market access, national treatment, MFN treatment, and others.

16. In addition, the database would allow for insertion of remarks or annotations by the user. A format for the supply of inputs has been proposed in order to serve as guideline in compiling data (see Box 1). Sample entries have also been given to serve as models (Box 2 contains a sample entry while annex III lists some sample records).

B. Main features

17. For ease of display of information on the initial screen and to facilitate accessing data, abbreviations of many items of information will be used. Therefore country codes, service-sector codes, and measures codes will be used. The code of the International Organization for Standardization (ISO) provides such a system of abbreviation for country names (e.g. AU for Australia). The Central Product Classification (CPC) number (e.g. 862 for accounting, auditing

and bookkeeping services) could be used for service sectors. No standardized coding system exists for measures affecting trade in services, but as the work on the proposed database will be a pioneering effort in this area, a classification system would need to be devised for grouping together similar types of measures affecting service trade.[3] Since the database is expected to be used for accessing information for policy-making as well as analyses in the context of international negotiations on trade in services, the classification of service activities developed as part of the Uruguay Round negotiations on trade in services should also be an element in the database.[4] The conformity of measures with such principles as market access, national treatment, and MFN treatment could be a useful criterion in accessing information from the database in the context of negotiations.

18. The combination of country code, sector code, mode of delivery and measure code would constitute a unique entry. Using this combination, the following inputs would be recorded at the time data is entered: regulation, source, GATS classification number, and the conformity of the measure in relation to multilateral principles of trade (market access, national treatment, MFN, and other).

19. The initial screen of the information system (see annex II) would display the following data elements: country code, sector code (CPC), GATS classification number, mode of delivery, measure code, detailed description of measure, regulation, source, conformity to trade principles (market access, national treatment, MFN, other), and remarks. The regulation, source, trade principles (the latter comprising four columns) and remarks columns would indicate 'X' or '-' depending on availability of further information. A window on the top right of the screen would display in full the information contained in the particular cell where the cursor rests. The user can enlarge information in any row, view details for any column containing an 'X', or print selected records.

Box 1
UNCTAD Database on Measures Affecting Service Trade
Format for Supplying Information

Country: Service:[a]

CPC No. GATS List No.
Regulation:

Full Publication Details:[b]

1. Article:
2. Summary:
3. Mode of Delivery Affected:[c]
4. Nature of Impact: ☐ Affects Market Access ☐ Affects National Treatment ☐ Affects MFN Treatment ☐ Other:
5. Other remarks or annotations:

[a] In the case of general regulations which apply to all service transactions, please write "All".

[b] Please attach a photocopy of the regulation, if possible, so that a library of relevant regulations can be built up in UNCTAD for reference.

[c] 1. Cross-border; 2. Consumption abroad; 3. Commercial presence; and 4. Personal mobility.

Box 2
A Sample Entry for the Database
UNCTAD Database on Measures Affecting Service Trade
Format for Supplying Information

Country: United States of America Service[a]: Hospital Services

CPC No. 9311 GATS List No: 8 A

Regulation: Regulations of the government entitlement programmes: Medicare and Medicaid

Full publication details[b]: David C. Warner, *Mexican Provision of Health and Human Services to American Citizens: Barriers and Opportunities*, Working Paper No. 21 (Washington, D.C.: Commission for the Study of International Migration and Co-operative Economic Development, 1990).

1. Article:

2. Summary:

In general, the government entitlement programmes (Medicare and Medicaid) do not reimburse for care given in another country. Medicare can help pay for care in a qualified Canadian or Mexican hospital only under three conditions:

1. The patient is in the United States when an emergency occurs and a Canadian or Mexican hospital is closer than the nearest U.S. hospital that can provide the emergency care services the patient needs.
2. The patient lives in the United States and a Canadian or Mexican hospital is closer to his home than the nearest U.S. hospital that can provide the care he needs, regardless of whether or not an emergency exists.
3. The patient is in Canada traveling by the most direct route to or from Alaska and another state and an emergency occurs that requires him to be admitted to a Canadian hospital.

3. Mode of delivery affected:[c] 2

4. Nature of impact:

[X] Affects Market Access
[ ] Affects MFN Treatment
[ ] Affects National Treatment
[ ] Other: .....

5. Other remarks or annotations:

---

[a] In the case of general regulations which apply to all service transactions, please write "All".

[b] Please attach a photocopy of the regulation, if possible, so that a library of relevant regulations can be built up in UNCTAD for reference.

[c] 1. Cross-border; 2. Consumption abroad; 3. Commercial presence; and 4. Personal mobility.

II. ACCESSING AND USING DATA

20. The proposed database would allow the data to be accessed in a variety of ways. The user could rank data according to any one of the four parameters which constitute the unique entry, i.e. country, sector, mode of delivery or type of measure. This would enable comparisons to be made and a preliminary overview of similarities identified. For example, a user ranking data according to type of measure can see which countries use similar measures and which sectors are affected by them. This would guide the specification and selection of criteria for accessing more detailed or narrowed-down information.

21. The user could select data by country, sector, measure and mode of delivery. Such selection lets the user focus on specific areas of information. For example, if the user selects "Australia", and "Accounting Services", he/she will be able to see the regulatory profile of the accounting services sector in Australia. This would show the regulatory strategies in the sector, the modes of delivery which are predominantly affected, and the potential modes for exporting services to that market. A comparison could then be made with other similar profiles for other countries or sectors. Such comparisons are useful in making inferences about the service policies and regulatory strategies of different countries, and their impact on service trade. Such information may be valuable to negotiators and private-sector service suppliers seeking to penetrate world markets. A negotiator may usefully assess the offers made by countries and formulate requests in areas of interest to his or her country's service providers by accessing the regulatory profile of a country with respect to the service sector in question. Potential service exporters may extract information on the regulatory structure of possible markets in their sector. They can then choose particular markets or niches which offer fewer barriers to entry and operation.

22. Similarly, information may be extracted showing all countries which use a particular measure and which sectors are affected by that measure – for example, which countries specify ratios for foreign and local workers and which sectors would be affected by this measure. Such information may be useful for analysts in understanding the use of specific measures, and in investigating whether there are patterns. For example, is the use of certain regulatory strategies related to the stage of development or the overall economic policies of a country? Furthermore, the preponderant use of some measures in some sectors may also indicate the relative usefulness (or otherwise) of specific regulatory strategies in particular sectors. This could be particularly relevant in the context of technological change, new situations concerning competition, etc. The information on preferential treatment accorded to service providers from certain countries through bilateral and regional agreements would also be valuable for analysts and policy-makers.

23. Ranking and extracting data according to the country, service sector, measure type and mode of delivery also provides the policy-maker with a directory of examples of regulatory strategies. He may be able to evaluate these measures on the basis of their potential impact on trade or on the basis of other information regarding the experience of countries using a certain measure. Once again, in the context of developing countries whose service sectors are undergoing changes in terms of technological transformation as well as competitive environment, the database may serve as a tool for learning how other countries have dealt with similar situations before. For example, issues related to transborder dataflows, computerized reservation systems, foreign direct investment, and market practices which have a restrictive impact on competition

could all be instances where the database could provide the policy-maker with information on regulations which can serve as guidelines in formulating new national regulatory policies.

III. MANAGING DATA

A. Main issues

24. The ubiquity of regulation in services poses enormous problems with respect to the scope and comprehensiveness of a database. Each service activity may be regulated by a variety of instruments. Some of them may take the form of regulations which apply to the sector as a whole, while others cover only a part of the sector. Certain measures cover the delivery of all services by a specific mode of delivery. Immigration and investment laws would be cases in point.

25. The situation is further complicated by the wide variety of regulatory instruments bearing on services. They include national legislation, provincial legislation, and the self-regulations of private bodies. In contrast to trade in goods, where tariffs and non-tariff barriers are usually clearly identifiable measures, for services it is difficult to compare regulatory instruments directly with one another. First it is necessary to identify the kind of measures under the particular regulatory instrument and then to compare them with similar kinds of measures used elsewhere by sector or by country.

B. Classification of measures

26. These considerations point to the need for a system for classifying measures affecting service trade, in order to make access to the data easy. Measures by types would indicate a preliminary view of the regulatory structure in a particular sector or country. Such an approach would also make data comparable across countries as well as sectors. However, devising such a system poses a challenge. The measure types must be applicable to a large majority of sectors and should be able to contain most of the important regulatory measures in each of those sectors. In other words, measure types should be able to accommodate general measures which apply to all sectors as well as sector-specific measures.

27. A classification system involves parameters for grouping some measures together; this has implications for the kind of selections possible in the database. For the proposed database, an important parameter would be the specific modes of delivery affected by a measure, based on the only internationally agreed definition of "trade in services" reached in the context of the Uruguay Round negotiations.[5] As conditional offers are made by countries according to modes of delivery, use of the same parameter would enhance the usefulness of the database in assessing offers and in formulating requests. However, sometimes the same measure may affect more than one mode of delivery. For example, local-content requirements may affect cross-border delivery or permanent presence or even the mobility of personnel in cases where employment of foreigners is linked to local-content requirements on the part of the employing firm or project. Therefore, rather than using mode of delivery as a principle for classifying measures, it may be easier to enter it as a separate input. A separate classification of measures by a well-defined typology would, of course, facilitate extraction of data in a more focused way.

Box 3
Classification of Measures: An Example

The same article in a regulatory instrument may contain a number of measures. For example, as conditions for granting an entertainment visa for performing in a film or television production not subsidized by a government in Australia, two criteria need to be met. First, the Ministry must be satisfied that Australians have been afforded a reasonable opportunity to participate in all stages of production. Second, the foreign investment in the production, or the private investment guaranteed against the foreign returns by a distributor, must be greater than the amount to be expended on entertainers sponsored for entry. These two conditions constitute two different kinds of measures: the first is a local participation requirement or an encouragement to use local service suppliers; the second is a net returns requirement. Both measures are comparable to similar measures in other sectors. For the database, this would mean that conditions which constitute the subclause of an article in the Migration Rules of Australia need to be classified as two separate measures.

Source: Migration Rules (Amendment), Statutory Rules 1991, No. 285, art. 25.1, *Commonwealth of Australia Gazette*, 17 September 1991.

28. There are many possible ways of classifying measures, and further study would be necessary before a classification system can be finalized. UNCTAD has devised a coding system for trade control measures, elements of which may apply to regulations affecting service trade.[6] UNCTAD's studies on individual service sectors have also identified a number of barriers to trade in individual service sectors. However, categories which would apply to most of the sectors would need to be identified in order to classify measures.

29. The Ernst and Young study conducted for the European Commission identified a number of obstacles to trade in services; they have been classified under six categories: set-up, operating, fiscal, financial, labour, and technical.[7] The information in that database is often provided by private sector entities reporting on perceived obstacles in other markets. It would be difficult to apply such a categorization directly to a database which deals with regulatory instruments, and indeed measures and obstacles are not necessarily identical.

30. Guidelines provided by article XVI of the draft GATS on the question of barriers to market access suggest categories such as:

- limitations on the number of service providers;
- limitations on the total value of service transactions or assets;
- limitations on the total number of service operations or the total quantity of service output;
- limitations on the total number of natural persons who may be employed in a particular service sector;
- measures which require specific types of legal entity or joint venture; and
- limitations on the participation of foreign capital.[8]

31. As one of the objectives of the database is to facilitate the access of developing-country service providers to world markets, these guidelines are useful in classifying measures affecting market access. In the draft final act of GATS, in addition to provisions of market access, there are provisions on national treatment (article XVII), government procurement (article XIII), payments and transfers (article XI), monopolies and exclusive service providers (article VIII), recognition (article (VII), additional commitments (article XIX) and regulation (article VI). These are also relevant for the database. For the purposes of demonstration, the UNCTAD secretariat is drawing up a list of measures for use in the prototype database, taking into account these considerations. Future work on building the database would involve the development of a system of classification for measures affecting trade in services. The use of an intelligent and efficient classification would appear to be extremely important in rendering the database manageable and user-friendly.

C. Other issues

32. The classification of service sectors poses less difficulties than the classification of measures as for the latter there is no established system of classification. The Central Product Classification (CPC) provides a detailed classification of service sectors and activities.[9] It is a numbered system which breaks down to the five-digit level in terms of disaggregation. However, for the database to be of use in the context of multilateral negotiations on services, the classification of service activities proposed in GATS need to be taken into account.[10] This system has three levels of disaggregation, and uses a combination of one number and two letters of the alphabet—e.g. 1 A b refers to Accounting, Auditing and Bookkeeping Services. The GATS system is not fully consistent with the CPC, although cross referencing with the CPC had been proposed. For instance, nursing (CPC 93191) which figures as part of other human health services in CPC (9319) appears in the GATS classification as 1 A j, as part of professional services; all other items under CPC 9319 are classified in the GATS classification under 8 B. Such incompatibilities mean that both codes need to be entered separately. The user would be able to rank the information according to either of these classificatory systems. This would increase the flexibility of the database in making information easily accessible for different purposes.

33. Another aspect of the management of data concerns the assessment of the conformity of measures to established trade principles. As mentioned earlier, identification by concepts inherent to multilateral negotiations would be useful, as these parameters have been used in qualifications made by countries as part of their conditional offers in the Uruguay Round. Annotations as to market access, national treatment, and MFN treatment would need to be included as part of the information on measures. For several measures the effect of the measure on market access and on national treatment may difficult to distinguish. The structure of the prototype database, which allows an 'X' or '-' to be entered against market access, national treatment and MFN, also leaves a fourth column in which to enter a description or comment on the effect of the measure in question. The inclusion of a data element entitled "Remarks", where the user can add his/her annotations on the measure will customize the database to some extent, and thus enhance its value for the user. The initial screen will display an 'X' to indicate the presence of this data element. The full text will appear if the user requests "details". The "enlarged" screen will display all the information that pertains to a record in a user-friendly way and without using codes.

IV. VIABILITY OF THE DATABASE: ANTICIPATED DIFFICULTIES

34. This chapter addresses some problems of a practical nature anticipated in setting up the database and compiling data. The issues discussed here should be viewed in conjunction with the aspects of data management described in the previous chapter, in order to get an overall picture of anticipated difficulties.

A. Scope

35. The main difficulty with respect to the compilation of data relates to the broad scope of the database. A comprehensive compilation of "information on measures, including laws and regulations, affecting the access of services and service suppliers to world markets" would require an extraordinarily large investment in terms of resources, effort and time. The ubiquity and complexity of regulations in the service sector make it so. Consulting regulatory instruments in each sector in each country would be a daunting task and one which may be difficult to carry out in the near future, which has implications for the short- and medium-term usefulness of the database.

B. Compilation of information

36. Obtaining details of regulatory instruments from each country would be the first stage. Even if special arrangements were made to make such information available to UNCTAD, the consultation on regulations and the ordering of data in the appropriate format for the database would take considerable time. In many sectors regulations go back to the last century or even earlier; in several cases, regulatory instruments refer to earlier instruments in a labyrinth-like regression. As the regulatory situation in the service sector is complex, many countries may need guidance in identifying their own appropriate regulatory instruments and in rendering the data available for inclusion in the database. Without a constant and efficient interface between UNCTAD and the focal points in individual countries, the collection of data may encounter serious difficulties. Further practical problems can also be envisaged with respect to languages/translation of national legislation and other regulatory instruments.

C. Self-regulation by private bodies

37. In many professional services, such as accountancy, legal services and medical services, the State often delegates the responsibilities of licensing and accreditation to self-regulating private bodies. The self-regulation of the private body may have the same force as national legislation in relation to trade in particular service. The database would need to address such self-regulation, as it constitutes valuable information on the recognition of professional qualifications, local examination requirements, local association requirements, barriers to foreigners acquiring local qualifications, etc. In addition, self-regulation can extend into several aspects of practice, which may have an impact on trade. The corpus of such self-regulation is often very large in the case of certain professional services. This raises the question as to how far the database should go in covering such self-regulation, and to what degree of detail. For example, should it contain details on qualifications and experience required for practice in a particular profession, or merely indicate the licensing authority and the general nature of licensing requirements? Such questions have practical implications for the design of the database.

D. Other issues

38. Immigration laws, despite their potential impact on the delivery of services through the movement of persons, are generally not linked to specific service sectors.[11] Such laws sometimes have sections on conditions of entry to deliver a particular service. Should the database merely record those sector-specific clauses in migration laws, or should it address the entire corpus of job-related provisions in immigration laws?

39. Finally, the database would also need to make adequate arrangements for the updating of data. Regulations in services change rapidly, especially in the context of recent moves towards the liberalization of service trade, technological changes that have necessitated major changes in regulation, and regional and bilateral agreements. Gathering information on recent changes may not be easy, especially if changes in the self-regulation of private bodies and provincial legislation are also taken into account. Options would need to be identified to keep the database up-to-date and viable.

V. VIABILITY OF THE DATABASE: MAJOR OPTIONS

40. This chapter will draw to the attention of the Committee some major options for rendering the database viable. These options respond to the problems outlined in chapter IV. As one of the principal difficulties arises from the broad scope of the database, most of the options outlined here imply a reduction in scope. Any such reduction should make possible more adequate coverage of the areas actually included, as well as lead to enhanced reliability of information, and greater viability in the collection and updating of data.

A. Limitation of country coverage

41. The first option involves a limitation of the country coverage. While eventually the database would cover all countries, the Committee may wish to consider limiting the domain of information in the initial database to a selection of countries which constitute major possible markets for services exports from developing countries. Since one of the objectives of the database is to facilitate the access of developing country service exporters to world markets, the collection of comprehensive information on major markets may be a useful starting point. This option would ease some of the difficulties in the compilation of data in the beginning, as the number of regulatory instruments covered would be restricted by the number of countries selected for inclusion. Furthermore, information on regulations is more easily available for some developed market-economy countries forming some of the potential markets for exports of certain services from developing countries. Covering such countries first would also allow time for setting up appropriate mechanisms for the collection of data from other countries. The experience of data collection from countries equipped to supply information readily would also enable the structure of the database to be fine-tuned before its coverage is extended to all countries. Whatever arrangements the Governments concerned might be able to make to assist in the collection of data on laws and regulations would have a strong bearing on this question.

42. However, confining the coverage of the database to a limited number of countries might have long-term repercussions for the usefulness of the database. Lack of adequate information on developing countries may restrict the usefulness of the database in supporting service trade among developing countries, and in

facilitating investment flows in the service sector towards developing countries. It would also restrict the immediate usefulness of the database for the analysis of the regulatory environment of developing countries. This consideration has importance in rethinking regulatory strategies and in exploring possibilities of regional integration and economic cooperation among developing countries in the services sector.

43. On the basis of the above considerations, it nevertheless seems likely that some initial limitation of the country coverage in the database, along with a time-table for expanding it, cannot be ruled out as an option. This would mean establishing focal points in the countries to be covered by the database and giving them adequate guidance on the timing and form of data compilation needed. Such a start would make the database operational in the short term.

B. Limitation of sector coverage

44. Another way of coping with the broad scope of the database at the initial stage would be to limit it in terms of sectoral coverage. The Committee may wish to consider choosing sectors of particular export interest to developing countries and providing detailed information on them. This could function as a useful learning experience and facilitate work on other sectors when the coverage of the database is extended. More detailed coverage of selected sectors would also enhance the usefulness of the database for analytical case studies of sectors; it would likewise strengthen the negotiating and policy-making capacity of developing countries in those sectors. Detailed information on measures affecting trade in service sectors of interest to them would assist developing countries in making requests and in assessing offers in the negotiating process. It could also help in focusing on those sectors where structured information is least available at present with respect to measures affecting trade in services.

45. The Committee may wish to consider a time frame for the inclusion of specific sectors for coverage by the database. This frame could be revised periodically to take account of the experience in data collection as well as any possible changes in priorities. Regulations which would affect all service sectors would, however, need to be included in the database at the very beginning, as such information is crucial for obtaining a comprehensive profile of barriers to entry or practice in a target market.

C. Other options

46. Two other options merit consideration. The first concerns the coverage of the self-regulation of private bodies concerned with professional services. As the corpus is very large, it might be useful to confine the coverage to the more important professional services traded. Furthermore, the extent of detail that could be provided on such self-regulation might also need some delimitation. One option would be to include the licensing or accrediting authority, and the kinds of requirements which the body stipulates before granting permission to practice. These would include local qualifications, local examinations, reciprocity arrangements, and requirements of prior experience, among others. While the database could indicate these measures, it might be too cumbersome to collect greater details of the kinds of qualifications recognized or the specific numbers of years of work experience required for particular professions. The inclusion of such information could affect the manageability of the database and make it difficult to up-date information, as such specific requirements change often.

47. Finally, the sources of information on measures used in the database need to be considered. Ideally, the regulatory instruments could be directly consulted and summaries made from them regarding each of the measures. However, this would require adequate resources in terms of data collection. The question of languages would have to be solved as the texts of many laws and regulations may not have been translated into working languages of the United Nations. The Committee may wish to consider the use of synthetic information on regulations in individual countries or sectors for use in the database. The prototype database includes information on regulations contained in the reservations made by countries in the Uruguay Round negotiations on services. Some countries publish information in condensed form regarding their service sectors. The Australian Department of Foreign Affairs and Trade, for example, published in 1989 a volume entitled *Australian Traded Services and the Uruguay Round*, which, *inter alia*, provides information on the principal regulatory instruments and measures which have an impact on foreign service suppliers. Studies made by international organizations and agencies could also yield valuable information for the database. The work of UNCTC on foreign direct investment legislation, OECD inventories of barriers to trade in tourism and shipping and the reservations to various OECD instruments, and UNCTAD's own sources of information on measures in certain sectors could be used in the database. The source of information would need to be clearly indicated in the database.

48. Another source of such synthetic information would be the existing databases themselves. ILO's Natlex database, for example, has relevant information on employment and welfare legislation; although it provides an annotated bibliography of regulatory instruments this is without detailed information on the regulations themselves. The European Commission's database on obstacles to trade in services contains detailed information on perceived barriers, but does not exclusively rely on regulations as sources. It may be important to explore the possibility of collaborating with other institutions that collect relevant information, so that any duplication of work can be avoided. The possibility of networking with such databases in order to provide and access information in a more efficient and cost-effective manner might also be considered.

VI. CONCLUSIONS AND RECOMMENDATIONS

49. This chapter summarizes the conclusions of the feasibility study and draws the Committee's attention to some recommendations regarding future work on such a database.

A. Conclusions

50. There is a pronounced need for a database on measures affecting trade in services, and as it would contribute substantially to the promotion of transparency with respect to the regulatory environment in the services sector. The database would be of considerable value to developing country negotiators in making requests and assessing offers, to service exporters from the private sector in identifying potential markets and procedures of entry and practice, to policy-makers in reviewing the regulatory experience of other countries and in comparing regulatory options, and to researchers for analysing in-depth the regulatory structures in specific service sectors and countries. UNCTAD's long-standing involvement with issues related to trade in services, its experience in providing technical assistance to developing countries in multilateral trade

negotiations, and its expertise in developing databases on trade measures affecting goods trade, would be of great value in developing the proposed database.

51. Adequate cognizance would have to be taken of the specificity of the regulatory situation in services where, unlike goods trade, regulation appears as the norm. The ubiquity and complexity of regulations in the service sector pose special challenges for the database in terms of classification and management of data as well as in terms of coverage. The following inputs were considered essential for the database:

- The country which imposes the measure;
- The service sector affected by the measure;
- The kind of measure imposed;
- A detailed description of the measure;
- The regulatory instrument which contains the measure;
- The source of information on the measure;
- The mode of delivery affected by the measure; and
- The conformity of the measure with multilateral trade principles such as market access, national treatment, MFN treatment, and others.

In addition, there will be a provision for including remarks or annotations by the user. A format for supplying information and sample entries has been prepared as part of the study, in order to facilitate the supply of data for the database.

52. Devising a classification system for measures affecting services trade was seen as crucial in making the information comparable and easy to access. Such a classification would have to take into account both measures which have a general scope and those that cover specific sectors. Annotations on the conformity of measures to multilateral trade principles could help in increasing the usefulness of the database in the context of negotiations; concepts such as market access, national treatment and MFN treatment could be very useful in this respect. The prototype database presents sample entries which may require improvement in the light of guidance from the Committee and member countries.

53. A number of practical difficulties were anticipated in the compilation and updating of data. The enormous scope of the database may make comprehensive coverage of information quite problematic. The wide variety of regulatory instruments in most sectors, the coverage of measures contained in provincial legislation and self-regulation by private bodies, and language difficulties should complicate the issue even further. Difficulties were also anticipated with respect to the supply of data from countries and to the updating of information. Procedures for assessing the mode of delivery affected by the measure and the conformity of the measure to multilateral trade principles would also need to be clarified.

54. Some major options for dealing with the problems raised were also identified. As most of the difficulties pertained to the scope of the database, the options involve a reduction in the scope of the database. They are:

- Limiting the coverage of the database at the initial stage to a selected number of countries. Options in selecting countries could be: (a) those that volunteer to supply information to the database, (b) those which constitute major potential markets for service exports from developing countries, and (c) those for which regulatory information is more readily available.

- Limiting the coverage to selected sectors at the initial stage so that sectors of particular export interest to developing countries could be included on a priority basis. The Committee may wish to consider selecting those sectors for which regulatory information is more easily identifiable, but where centralized and structured ways of accessing such information do not exist.
- Information on self-regulation by private bodies could be confined to the more important professions and delimited in terms of detail, restricting it to information on licensing or accrediting authority and the kinds of requirements for permission to practice.
- Reliable secondary and synthetic sources of information on regulations could be used in the database in addition to direct reference to regulatory instruments.

B. Recommendations

55. A series of recommendations are also prepared for presentation before the Committee regarding future work on the database:

- The Committee may wish to request the active co-operation of member countries in refining the methodology used in the prototype database, and in evolving a system of classification of measures.
- There is a need for making clear intergovernmental arrangements for the compilation and supply of data. Given the extent of regulation in services and the large scope of the database, it would appear to be impossible for the UNCTAD secretariat to carry out the work of collecting data without the active collaboration of Governments, including arrangements to supply information on the regulatory structures and instruments in services in their country. Specific modalities need to be devised for the collaboration of Governments and UNCTAD. Focal points would need to be identified in capitals and mechanisms for constant and active interaction between UNCTAD and such focal points would need to be devised.
- A time-table would need to be agreed on by the Committee for the inclusion of specific countries and sectors in the database. Such a time-table should provide for adequate preparatory work and offer guidance, especially in the case of countries which may have difficulty in collecting and supplying information.
- UNCTAD could explore possibilities of collaboration with other international organizations and agencies that have collected information in this area; the work of ILO on migrant labour, IOM on immigration, WTO on tourism, UNESCO on education and professional qualifications, and OECD and the European Community on a number of services may be relevant. Information on existing databases could be provided, and the possibility of networking with them could be explored.

Notes

1. The draft final act defines trade in services as the supply of a service "(a) from the territory of one Party into the territory of any other Party; (b) in the territory of one Party to the service consumer of any other Party; (c) through the presence of service providing entities of one Party in the territory of any other Party; (d) by natural persons of one Party in the territory of any other Party." (See GATT MTN.TNC/W/FA, p. 6)

2. See Annex I for a preliminary outline of the proposed database.

3. See chapter V below for a detailed discussion on this subject.

4. See GATT MTN.GNS/W/120 for the services sectoral classification list. See also chapter V of the present paper.

5. See footnote 1.

6. UNCTAD, *Directory of Import Regimes* (UNCTAD/DMS/2(Part I).

7. For information on the Ernst and Young catalogue on barriers to trade in services, see the proceedings of the seminar on "The Impact of the Uruguay Round Services Negotiations on the Accountancy Profession", 1-2 February 1990, Vevey, Switzerland, organized by the Fédération des experts comptables européens.

8. This is a cursory summary; for details, see GATT MTN.TNC/W/FA, pp. 20-21.

9. See *Provisional Central Product Classification* (United Nations publication, Sales No. E.91.XVII.7), pp. 127-57.

10. See GATT MTN.TNC/W/120.

11. This issue, including the sectoral specificity of immigration laws, is dealt with in the background note prepared by the secretariat for discussion under agenda item 3 (h).

Annex I

UNCTAD Database on Measures Affecting Service Trade

The Work Programme established by the Standing Committee on Developing Service Sectors, at its first session in October 1992 included a decision to:

> collect and disseminate information on measures, including laws and regulations, affecting the access of services and service suppliers to world markets, including a study of the possibility of setting up a computerized database in this regard, with a view to enhancing the service exports of developing countries.

Preliminary work on preparing the database was begun in January 1993. The immediate aim is to prepare a prototype database, which can then be augmented with detailed data from various countries.

The preparation of a database on measures affecting service trade is an ambitious venture. In order to be of use to researchers as well as policy makers, the database should have summaries of the text of regulations rather than mere references to them. The data would be made available for access according to a number of parameters: the country which imposes the measures, the services affected and the modes of delivery affected, as these would appear to be the most important. Then the service in question could be accessed according to various classification systems, e.g. the Central Product Classification and the list of services prepared for multilateral negotiations in the Group of Negotiations on Services.

The user will be able to ask the database for the regulatory profile of a certain country with respect to a certain service sector. Then the user will be able to ask for further details on measures affecting a specific mode of delivery, as well as the regulatory details on each of these measures. Furthermore, the user will be able to compare the regulatory profiles of various countries with respect to one particular service sector. A glossary will be available as well, providing information on terms that would warrant further explanation.

The database would include details of national legislations of countries as well as those of relevant private bodies where the State has delegated responsibilities of licensing or accreditation to them in certain service professions. It would contain information on entry restrictions, professional qualifications, measures on establishment, and regulations that affect the movement of consumers, among a wide variety of service measures and sectors.

The preparation of the prototype database as well as the design of the software will be completed by October 1993. The active co-operation of individual countries and international organizations will be sought in compiling relevant data. It is hoped that the database will be a major step towards greater transparency regarding the regulatory environment in services and will be very useful in the analysis of the sector, in policy making and in negotiations.

Annex II
Simulated Screens from the Database

Sample Initial Screen

The inner window expands information in the cell (underlined) where the cursor is.

VIEW — Advertising Services

Rep	CPC	GATS	Mode	Meas	Desc	Reg	Src	MA	NT	MFN	Other	Rem
AU	871	1Fa	1	14	X	X	X	X	-	X	-	X
CA	7471	9B	3	35	X	X	X	-	X	-	-	-
US	811	7B	3	82	X	X	X	X	-	-	-	-
GB	862	1Ab	4	31	X	X	X	X	-	-	-	-
AT	812	7A	3	29	X	X	X	-	X	-	-	-
HK	64	9A	3	35	X	X	X	-	X	-	-	-
MY	9312	1Ah	4	33	X	X	X	X	X	-	-	-

F1 Help	F2 Select	F3 Gloss	F4 Enlarge	F5	F6 Details	F7	F8 Print	F9 Rank	F10 Quit

Sample Enlarged Screen for the first line in the initial screen

Country: AUSTRALIA

Sector: ADVERTISING SERVICES

Mode: CROSS BORDER

Measure: LIMITATION ON MARKET SHARE OR QUANTITATIVE RESTRICTIONS

Details: Foreign content of television advertising is restricted to material which is not obtainable in Australia, and is limited to 20 per cent or less of any advertisement unless the foreign material used has been produced by Australians who journeyed to places or events concerned for that purpose. Material produced in New Zealand is excluded from this limitation.

Regulation: Broadcasting Act 1942, Australian Broadcasting Tribunal Standards; Copyright Act 1968; Trade Practices Act.

Source: Australian Traded Services and the Uruguay Round (Park ACT: Dept. of Foreign Affairs and Trade, 1989).

Relevant trade principles: Market Access
Most Favoured Nation Treatment

Remarks: Foreign-owned agencies established in Australia are not affected by this. No limit on the level of foreign ownership in Australian agencies. (Same source)

F1 Help	F2	F3	F4	F5	F6	F7 Search	F8 Print	F9	F10 Quit

Annex III
Sample records from the prototype database

Country	Sector	CPC	GATS	Mode	Measure Type	Detailed Description	Regulation	Source	Remarks
Australia	Advertising Services	871	1 F a	1	Limitation on market share or quantitative restrictions	Foreign content of television advertising is restricted to material which is not obtainable in Australia, and is limited to 20 per cent or less of any advertisement unless the foreign material used has been produced by Australians who journeyed to places or events concerned for that purpose. Material produced in New Zealand is excluded from this limitation.	Broadcasting Act 1942; Australian Broadcasting Tribunal Standards; Copyright Act 1968; Trade Practices Act.	Australian Traded Services and the Uruguay Round (Part ACT: Dept. of Foreign Affairs and Trade, 1989).	Market Access MFN Treatment
Canada	Travel agency and tour operator services	7471	9 B	4	Residence requirements	Travel agents and travel wholesalers must be permanent citizens of Canada. Tourist outfitters and guides in provincial parks: non residents pay a higher fee.	Ontario Travel Industry Act	Provincial legislation	National Treatment
United States	Banking	811, 813	7 B	3	Restrictions on distribution	A foreign bank or its subsidiary not incorporated in the United States cannot open branches in more than one state. Foreign banks with branches in several states before 27 July 1978 were grandfathered. Domestic banks are similarly restricted by the McFadden Act.	International Banking Act	Services of the Commission of EC, Report on US Trade Barriers 1992.	Market Access
United Kingdom	Accounting, Auditing and Bookkeeping services	862	1 A b	4	Local union or association requirements	Appropriate qualifications include membership in ICAEW, ICAS, ICAI or ACCA. In the first three associations membership is open to non-UK nationals on the same basis as for UK nationals. Admission is on the basis of the completion of a training contract with an approved training office and passing the institute's professional examinations. Reciprocal membership arrangements with chartered accountants' associations in Australia, New Zealand and Canada.	Companies Act 1989	ICAEW, Practice Rights in the UK for non-EC nationals	Market Access
Austria	Insurance	812	7 A	3	Other capital-related measures	Branches of foreign insurance companies must deposit a security before doing business. In addition, a further variable deposit is required, if applicable, which is the difference between the fixed minimum deposits and the amount of the deposits, calculated according to the line of business.	Federal law of 18.10.1978, as amended by that of 10.11.1982 and the regulation of the Ministry of Finance of 4.12.1978	City Financial, Insurance Handbook: A Legal Guide for the Insurer and the Reinsurer	Market Access
Hong Kong	Hotel and Restaurant services	64	9 A	3	Residency requirements	Establishment subject to licensing conditions which include residence requirements of the operator.	Not available	National legislation	Market Access
Malaysia	Medical and dental services	9312	1 A h	4	Restrictions on practice	Access allowed only in those geographical areas where there are no Malaysian specialists available locally.	Medical Act 1971	National legislation	Market Access National Treatment